

OECA and Regional Report

Week Ending December 2, 2016

**** Enforcement Sensitive Items Highlighted in Red ****

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Ex. 7(A) and unrelated matter

- **United States Files Amicus Brief in Montana State Supreme Court To Prevent Landowners Interference With CERCLA Remedial Action For Anaconda Smelter Superfund Site In Atlantic Richfield Company v. Montana Second Judicial District Court, OP 16-0555 (2016)**

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United States Files Amicus Brief in Montana State Supreme Court To Prevent Landowners Interference With CERCLA Remedial Action For Anaconda Smelter Superfund Site In Atlantic Richfield Company v. Montana Second Judicial District Court, OP 16-0555 (2016)

The U.S. Department of Justice, on behalf of EPA, lodged a brief in the Montana Supreme Court on Wednesday, November 16, 2016 concerning the lawsuit filed by landowners against the Atlantic Richfield Company (ARCO) at the Anaconda Smelter Superfund Site (the Site). The case was initially scheduled for trial in state district court in November 2016. On October 15th, the Montana Supreme Court vacated the trial date and ordered the landowners and ARCO to file briefs on the question of whether CERCLA barred the landowners' restoration claims. The court invited EPA and other interested parties to file *amicus curiae* briefs in the matter.

Because of the Site's enormous size, EPA has been working with ARCO for over a decade or more to identify and implement protective remedies at this mega Site. The selected remedies have followed the NCP process, including public participation. To ensure those remedies are properly implemented and to protect the integrity of the CERCLA process, the U.S. amicus brief argues that CERCLA expressly bars the landowners' claim for restoration damages because it is a challenge to EPA's remedy pursuant to Section 113(h). The brief also argues that the landowners' claim is preempted and that Section 122(e)(6) does not permit potentially responsible parties (i.e., the landowners) to undertake unauthorized remedial actions. If implemented, the landowners' restoration would require different cleanup standards and impose additional response actions, including the installation of groundwater barriers, which EPA believes would directly affect EPA's selected remedy. Contact: Clarence Featherson (202) 564-4234.

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